

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES BRAGGS,

Defendant and Appellant.

D058443

(Super. Ct. No. SCD 222240)

APPEAL from a judgment of the Superior Court of San Diego County, Kathleen M. Lewis, Judge. Affirmed.

Charles Braggs pleaded guilty to robbery, five prison prior convictions, two serious felony prior convictions and three strike prior convictions. The trial court denied Braggs's motion to dismiss at least one of the strike prior convictions, but struck three of the prison priors. Braggs received a prison term of 25 years to life on the robbery, with an additional ten years for the two serious felony prior convictions. Braggs's sole contention on appeal is

that the court abused its discretion in failing to strike a prior strike conviction under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). We affirm.

FACTUAL BACKGROUND

On August 10, 2009, Braggs approached a Subway restaurant employee carrying a money bag and asked him for the time. Braggs then hit the victim in the throat, knocking him to the ground. The men struggled over the money bag, until Braggs was able to run off with it. The victim and one or two witnesses chased Braggs until they heard him say that he had a knife and a gun. The witnesses wrote down the license plate number of Braggs's car as he drove off.

DISCUSSION

Braggs asserts he does not fit within the spirit of the three strikes law because his prior convictions were remote, and his guilty plea and mental illness should militate against harsh sentencing. We disagree.

In deciding whether to dismiss a prior conviction allegation under Penal Code section 1385, a trial court must consider whether, "in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) However, the court may not strike a sentencing allegation out of judicial convenience or because of court congestion, because a defendant pleads guilty, or out of

personal antipathy for the effect that the three strikes law would have on a defendant.

(*Romero, supra*, 13 Cal.4th at p. 531.)

We review the trial court's refusal to strike a prior conviction allegation for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) The defendant has the burden of showing that the sentencing decision was irrational or arbitrary. (*Id.* at p. 376.) Without such a showing, we must presume the trial court acted to achieve legitimate sentencing objectives and will not set aside its discretionary determination to impose a particular sentence unless its decision was so irrational or arbitrary that no reasonable person could agree with it. (*Ibid.*)

Our review of the record convinces us that the trial court fully understood the scope of its discretion on the *Romero* motion and properly applied it. Braggs has a long and almost continuous criminal history. He committed his first criminal offenses in 1982 for reckless driving and possessing a switchblade. Thereafter, he suffered convictions in 1984, 1986 and 1987 for stealing a purse, automobile burglary and automobile theft. The following year, he suffered his first prior strike conviction four days after being released from prison. For that crime, he bound the hands of a store employee and gagged him. He then walked the employee around the store while asking for the safe and feigning a weapon inside a cloth bag.

He committed his second and third prior strike convictions in 1990. He entered a store brandishing a gun, threatened to "blow" the victim's head off, and then tore off the victim's clothes while telling the victim he was going to "fuck her." He received a 15-year

prison term for these crimes, but was paroled in 1999. In 2004, he suffered a conviction for being a felon in possession of a firearm. He committed the instant offense in 2009.

Braggs has a history of drug abuse and claims he was diagnosed with post traumatic stress disorder while in the Marines, and with bipolar and paranoid schizophrenia in 2008. However, a mental condition is a mitigating factor in sentencing only if that condition "significantly reduced culpability for the crime[.]" (Cal. Rules of Court, rule 4.423(b)(2).) Here, the trial court noted that Braggs was not forthcoming to a clinical psychologist regarding his past legal history, denied committing the instant offense, and previously showed little remorse for his actions. Although it acknowledged Braggs's psychiatric history, the trial court did not find "any significant history or diagnoses that amount[ed] to a defense or reduce[d] [his] culpability for the current or the past crimes." Braggs's psychological evaluation supported the trial court's conclusion.

In denying the motion, the trial court noted that it read everything submitted and considered the nature and circumstances of the present and past crimes as well as "the particulars of [Braggs's] background and prospects and characteristics." While the court acknowledged Bragg's guilty plea, it concluded that the evidence against him was "overwhelming" and that the chances of a conviction were high. It noted the violent nature of the current and past offenses, that Braggs was still committing violent crimes at age 47, and concluded that Braggs "made no effort to rehabilitate himself" and "f[e]ll directly within the three strikes law."

While we sympathize with Braggs's struggle with mental illness, we are satisfied that the trial court did not abuse its discretion in denying the motion to strike a prior conviction.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.